

MEETING MINUTES
Board of Mental Health Practice
March 23, 2018

These minutes were approved by
the Board on May 4, 2018

1. ROLL CALL

The meeting of the Board of Mental Health Practice was called to order by the Chair, Susan Feyen, at 9:01 a.m. in Lower Level Room B, State Office Building, 301 Centennial Mall South, Lincoln, Nebraska. Copies of the agenda were mailed to the Board members and other interested parties in accordance with the Open Meetings Law.

Members Present:	Dale Battleson Chante Chambers Cassandra Dittmer Susan Feyen William Gaughan L. Janeen Gill Terrance Moore Sarita Ruma	Member Member Member Chair Member Member Member Secretary
Members Absent:	Thomas Maxson Tamara Kenning	Member (arrived 9:02 a.m.) Member
Others Present:	Kris Chiles Nancy Herdman Mindy Lester Jeff Newman Carla Cue Kathleen Krueger Larry Wiehn Trevor Klaassen Mark Meyerson Anna Harrison	Program Manager, Licensure Unit Health Licensing Coordinator, Licensure Unit Assistant Attorney General Investigator Investigator Investigator Investigator Investigator Investigator Compliance Monitor

A quorum was present and the meeting convened.

9:02 a.m. - Maxson entered meeting

2. ADOPTION OF AGENDA

MOTION: Battleson moved, seconded by Gaughan, to adopt the agenda. A voice vote was taken. Voting aye: Battleson, Chambers, Dittmer, Feyen, Gaughan, Gill, Maxson, Moore, Ruma (9). Voting nay: None (0). Absent: Kenning (1). Abstain: None (0). Motion carried.

3. APPROVAL OF MINUTES (1-5-18)

Battleson provided some corrections on page 3 under AMFTRB. .

MOTION: Battleson moved, seconded by Ruma, to approve the minutes of 1-5-18 as corrected. A roll call vote was taken. Voting aye: Battleson, Chambers, Feyen, Gaughan, Gill, Maxson, Moore, Ruma (8). Voting nay: None (0). Absent: Kenning (1). Abstain: Dittmer (1). Motion carried.

4. INVESTIGATIVE REPORTS & OTHER CONFIDENTIAL INFORMATION – CLOSED SESSION

MOTION: Battleson moved, seconded by Moore, to enter into closed session at 9:04 a.m. to hear discussions of an investigative/confidential nature, and for the prevention of needless injury to the reputation of the individuals. Feyen repeated the motion purpose. A roll call vote was taken. Voting aye: Battleson, Chambers, Dittmer, Feyen, Gaughan, Gill, Maxson, Moore, Ruma (9). Voting nay: None (0). Absent: Kenning (1). Motion carried.

9:05 a.m. - Battleson departed meeting (conflict)
9:20 a.m. - Battleson entered meeting
9:21 a.m. - Krueger departed meeting
9:26 a.m. - Ruma departed meeting (conflict)
9:35 a.m. - Ruma entered meeting

9:44 a.m. - Newman departed meeting
9:50 a.m. - Gaughan departed meeting (conflict)
10:05 a.m. - Break
10:19 a.m. - Meeting resumed
Gaughan entered meeting
10:22 a.m. - Moore departed meeting (conflict)
10:34 a.m. - Moore entered meeting
11:00 a.m. - Moore departed meeting (conflict)
11:15 a.m. - Moore entered meeting
Gill departed meeting (conflict)

MOTION: Battleson moved, seconded by Chambers, to enter into open session at 11:17 a.m. A roll call vote was taken. Voting aye: Battleson, Chambers, Dittmer, Feyen, Gaughan, Maxson, Moore, Ruma, (8). Voting nay: None (0). Absent: Gill, Kenning (2). Motion carried.

11:17 a.m. - 1 public person entered meeting
Dr. Tom Williams entered meeting
Clue, Klaassen and Wiehn departed meeting
11:18 a.m. - Gill entered meeting

Moved to agenda item 6.

6. REGULATIONS: REVIEW, DISCUSSION, AND SUGGESTED CHANGES TO 172 NAC 94

Dr. Williams opened the discussion by providing information relating to his background. He stated that he understood there had been a lot of uncertainty regarding the regulations and he wanted to try to help and see if there was a way to get them moving forward. He stated the current administration does not feel sexual orientation and gender identity are law based and will not pass regulations with that wording. Dr. Williams stated he had talked with many individuals and he understood the position of the Catholic Conference. He commented that referral might be a way to address the issue. Dr. Williams proposed that Feyen and he work with stakeholders and bring back proposed language to the Board.

11:21 a.m. - Teresa Hampton, Department attorney, entered meeting
11:28 a.m. - 2 public persons entered meeting

Feyen asked Dr. Williams who was the administration he was referring to. He responded the Governor. Dr. Williams stated the goal is to limit regulatory burden and he wants to see the regulations work for the Board. Feyen commented the national code of ethics for the professions included sexual orientation and gender identity and asked if those codes could be referenced in the regulations. Dr. Williams responded that when they had originally met with Feyen, he thought that might work, but was now less hopeful. Battleson stated the references were dropped because of the Catholic Conference and not mental health professionals. Dr. Williams responded there were other faith based mental health professionals who voiced concern. He stated the concern is that it could be a professional/moral issue for these individuals because they cannot provide services relating to same sex relationships due to their beliefs, but they do provide services for other issues.

Maxson thanked Dr. Williams for his candor and Dr. Williams thanked the administration for allowing him to present the information. Feyen commented this was the 3rd Director she has met with and it was frustrating from a public protection perspective. Dr. Williams responded he did not think it was currently a major public protection issue. Battleson asked if the regulations were causing any other controversy besides referral and Dr. William said none that he was aware of.

Dr. Williams suggested a committee be formed to put together language. A workgroup was formed with Feyen, Ruma and Dittmer who will work with Dr. Williams and other stakeholders to develop proposed language which will be brought back to the Board.

11:49 a.m. - 1 public person entered meeting

Maxson asked how change could be affected. Dr. Williams responded a change of administration or if the words were in statute which would then become law. Hampton commented there could also be a court ruling.

A public person commented that a counselor does not have to provide therapy if they are uncomfortable. The person asked what faiths Dr. Williams was referring to and he responded it was mostly Catholic but there were other faith based counselors who had concerns. Dr. Williams said it mainly came down to the referral portion.

11:54 p.m. - Harrison departed meeting

The Board moved on to the definition of major mental disorder. Feyen presented a draft definition developed after meeting with representatives of the Board of Psychology. Dittmer asked who decided whether it was moderate, severe or extreme. Feyen responded it would be the competence of the practitioner. Maxson asked where the definition would be placed in the regulations. Chiles commented that the Board of Psychology had discussed using the first paragraph as the definition of 'mental and emotional disorder' and the rest of the document as the definition of 'major mental health disorder'. The Psychology Board suggested changing 4 to a 3 for the moderate impairment areas. Maxson questioned having legal under major mental health disorder and stated he looks at the biological issues. Battleson commented he thought the definition was more mental health disorder and he would like to see more content on danger or psychotic episodes. Dittmer asked what was the impact if the definition was changed and what was its use. Feyen responded it defines what is a mental health disorder and what is a major mental health disorder, who can bill what, and it removes a specific list of major mental health disorders that is currently in the regulations. Gill commented by providing a specific list, individuals believe that is the entire listing of major mental disorders and they miss the symptomology. The definition helps individuals to practice within their scope.

Feyen will continue to work with the Board of Psychology representatives to come up with common language.

12:20 p.m. - Break
12:35 p.m. - Meeting resumed
2 public persons entered meeting
Hampton departed meeting

7. MEDICAID REIMBURSING APPLIED BEHAVIORAL ANALYSTS – FUNCTIONAL ASSESSMENTS

a. Presentation by Michael Wasmer, Director of State Government Affairs, Autism Speaks

Michael Wasner introduced himself and Johanna Taylor of the Nebraska Association for Behavior Analysis. Wasner provided the members with a notebook of materials and a handout. Wasner stated he was present to address Dr. Reay's previous presentation to the Board regarding Board Certified Behavioral Analysis (BCBA) who were not licensed in Nebraska but providing services in Nebraska and receiving reimbursement from Medicaid for a functional behavior assessment (FBA). He stated there were 47 states that cover Applied Behavioral Analysis (ABA) in fully insured plans and 29 states that require the licensure of behavioral analysts. He stated 14 states allow individuals to provide ABA services for Medicaid without a license and 19 states reimburse for the services in the private market. Wasner commented that that BCBA accredits programs for certification, it has title protection and there is ethical enforcement and discipline authority. He said a BCBA reviews the client environment regarding problem areas and the findings are incorporated into the treatment plan. He said all BCBAs have training in the FBA. Wasner commented there was no definition of a FBA in the Mental Health Practice Act so he did not understand how a BCBA could be violating the Act. He stated West Virginia performed an audit of BCBAs in their state and determined they provided quality services. He said in California under their insurance called DMHC that BCBA practice was effectively a license.

Wasner stated that it would significantly impact services across that state if ABA services cannot be provided. Battleson asked if they become Mental Health Counselors would it improve the quality. Wasner responded that a BCBA was qualified to provide FBA's and it would disrupt services if they must

be licensed as a mental health practitioner. He re-stated there was no definition of a FBA in the regulations.

Lester asked Wasner if he thought it fell under mental health practice as defined. His response was that federal law says ABAs can do it. Gill asked how was the FBA different from assessment for mental health. Johanna Taylor responded that they look at the indirect, do observations with multiple people and may do a FBA to manipulate the environment. Battleson asked about the training required and Johanna Taylor responded a master's degree, ABA courses, and 1500 hours of supervised experience. Lester asked if they were opposed to be monitored as a licensed profession. Johanna Taylor responded that she did not think mental health assessment was defined specific enough to say a BCAB cannot practice. Maxson responded that FBA is not specific to ABA and people do assessment as mental health practitioners.

b. Presentation by William Reay, PhD, OMNI Behavioral Health, relating to Certification v. Licensing

Dr. Reay stated he was trained in behavioral analysis so he understands the field. He said the issue is the law and a BCBA is not a license. He stated there was no protection to the consumer, no state authority, and clients can have co-morbid issues. Dr. Reay commented that 44-7106 was a coverage law that allows payment but was not a practice law. He stated it conflicts with the practice law of mental health practice. He commented that under the Sherman Act the BCBAs are acting as a cartel as they are serving themselves. Dittmer asked Dr. Reay what was the difference between a FBA and assessment in the mental health regulations. He responded that he saw no difference as both were assessments. He said FBA was a class of diagnostics. He commented that Medicaid law did not harmonize with mental health practice licensing. Battleson ask if BCBAs were licensed, what would happen to the clientele. Dr. Reay responded he did not know. He stated patients are vulnerable and there is no state oversight. Feyen commented she has done education reviews and many program such as Art Therapy had been previously denied and they then revised their programs which met the educational requirements for a mental health practice license. Chiles commented that a 407 review was completed for applied behavioral analysis (ABA) in the past.

1:35 p.m. - Ruma and Gaughan departed meeting

c. Continued Discussion by Board

Dittmer commented she thought BCBAs were more like para-professionals and not therapists. Feyen stated she would like to see the 407 paperwork. Feyen commented her sister was an applied behavior analyst and she thought it was a fine line but felt it fell under mental health. Wasner responded that the BCBA cannot do diagnostics. A public person commented the BCBA reviews the environment and not the mental health of the person.

The Board agreed they would discuss this agenda item further at the May meeting.

1:50 p.m. - Break
Michael Wasmer, Johanna Taylor, Dr. Reay departed meeting
Public persons departed meeting
2:01 p.m. - Meeting resumed

8. UPDATES AND REPORTS

a. 2018 Legislative Update

LB 299 – Proposing changes in regulatory process and applicants can petition a board to review their convictions before they apply for a license. It is a priority bill.

LB 834 – Provide for waiver of certain occupational and licensing fees. The bill has not moved out of committee.

LB 836 – Provide 6 sessions of services to minors without parental consent. Bill has not moved out of committee.

LB 982 – Provide for persons 18 years of age or older to consent to certain behavioral health services. Bill has not moved out of committee.

LB 891 – Prohibit discrimination in the provision of services as prescribed under the Psychology Practice Act. It has not moved out of committee.

Chiles reported there was a psychology bill for an interjurisdictional compact for telehealth and also a compact bill physical therapy and EMS.

b. AASCB / AMFTRB / ASWB / Citizen Advocacy Center / Justice Behavioral Health Committee

AASCB – There was no report.

AMFTRB – Battleson reported he traveled to Denver and worked on panel to determine the minimum score for the examination. He is also an item writer for the examination.

ASWB – Feyen reported she is going to Halifax in May to attend the meeting.

Citizen Advocacy Center – There was no report.

Justice Behavioral Health Committee – There was no report.

c. DISCIPLINARY/NON-DISCIPLINARY REPORT/LICENSURE STATISTICS/ADMINISTRATIVE PENALTY FEES ASSESSED

Chiles reported since January 2018, there was 1 voluntary surrender (Mark Garlick).

Chiles reported the following examination results since January 2018:

- AMFTRB – 1 pass
- NBCC NCE – 14 pass, 2 fail
- NBCC NCMHCE DM – 1 pass, 3 fail
- NBCC NCMHCE IG – 4 pass
- ASWB – 18 pass, 4 fail

Chiles distributed the following statistics:

- LIMHP – 1710
- LMHP – 2675
- CPC – 973
- MFT – 97
- MSW – 924
- CMSW – 33
- PLMHP – 985
- PL MSW – 262
- CSW - 621

Moved back to agenda item 4.

4. INVESTIGATIVE REPORTS & OTHER CONFIDENTIAL INFORMATION – CLOSED SESSION

MOTION: Battleson moved, seconded by Moore, to enter into closed session at 2:20 p.m. to hear discussions of an investigative/confidential nature, and for the prevention of needless injury to the reputation of the individuals. Feyen repeated the motion purpose. A roll call vote was taken. Voting aye: Battleson, Chambers, Dittmer, Feyen, Gill, Maxson, Moore (7). Voting nay: None (0). Absent: Kenning, Gaughan, Ruma (3). Motion carried.

MOTION: Battleson moved, seconded by Gill, to enter into open session at 2:51 p.m. A roll call vote was taken. Voting aye: Battleson, Chambers, Dittmer, Feyen, Gill, Maxson, Moore (7). Voting nay: None (0). Absent: Kenning, Gaughan, Ruma (3). Motion carried.

Moved to agenda item 5.

2:51 p.m. - Hampton and Harrison departed meeting

5. REVIEW, RECOMMENDATIONS, AND REPORT OUT

- Applications, Mail Ballot Report and Reinstatements

Cami Sazama – CSW Applicant

MOTION: Battleson moved, seconded by Dittmer, to recommend issuance of the license with 2-year probation with the standards terms and conditions of probation and the following: quarterly reports from the probation officer, quarterly reports from the employer, comply with treatment recommendations, comply with all requests from the Department including body fluid screens. A roll call vote was taken. Voting aye: Battleson, Chambers, Dittmer, Feyen, Gill, Maxson, Moore (7). Voting nay: None (0). Abstain: None (0). Absent: Gaughan, Kenning, Ruma (3). Motion carried.

Erin Roman – PLMHP Applicant

MOTION: Moore moved, seconded by Battleson, to recommend issuance of the license. A roll call vote was taken. Voting aye: Battleson, Chambers, Dittmer, Feyen, Gill, Maxson, Moore (7). Voting nay: None (0). Abstain: None (0). Absent: Gaughan, Kenning, Ruma (3). Motion carried.

2:24 p.m. - Teresa Hampton, Department attorney, entered meeting
Lester departed meeting

Heather Jackson – LIMHP, LMHP and CPC Reinstatement from Discipline (Modification of Probation Terms and Conditions)

MOTION: Gill moved, seconded by Maxson, to deny reinstatement from discipline based on not enough time has passed. A roll call vote was taken. Voting aye: Battleson, Chambers, Dittmer, Feyen, Gill, Maxson, Moore (7). Voting nay: None (0). Abstain: None (0). Absent: Gaughan, Kenning, Ruma (3). Motion carried.

Christy Meyer – LMHP and CPC Reinstatement from Discipline (Voluntary Surrender)

MOTION: Maxson moved, seconded by Moore, to recommend reinstatement of the license based on successfully completing 2 years of supervised practice in Iowa in accordance with the Licensure by Consent Agreement issued on 12-16-15 by the State of Iowa. A roll call vote was taken. Voting aye: Battleson, Chambers, Dittmer, Feyen, Gill, Maxson, Moore (7). Voting nay: None (0). Abstain: None (0). Absent: Gaughan, Kenning, Ruma (3). Motion carried.

11. ADJOURNMENT

Feyen adjourned the meeting of the Board of Mental Health Practice at 2:58 p.m.

Respectfully Submitted,

Sarita Ruma, Secretary
Board of Mental Health Practice

Summarized by: Nancy Herdman, Health Licensing Coordinator, Licensure Unit